

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CONTROL VALLEY REGION

ACL COMPLAINT NO. 98-502

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

FERNANDO B. SILVA, TERESINHA SILVA, DUARTA M. SILVA,
FRED A. SILVA, GERMANA M. SILVA, ALBERTINA M. SILVA,
JOHN, EDDIE, FERNANDO AND MANUEL NACIAMENTO
dba SILVA FARMS DAIRY
STANISLAUS COUNTY

This complaint is issued to Fernando B. Silva, Teresinha Silva, Duarta M. Silva, Fred A. Silva, Gernana M. Silva, Albertina S. Silva, John Naciarnento, Eddie Naciamento, Fernando Naciarnento, and Manuel Naciamento (hereafter collectively referred to as Discharger) based on a finding of violation of Cleanup and Abatement Order 97-711, pursuant to the provisions of California Water Code Section 13350, which authorizes the imposition of Administrative Civil Liability.

The Executive Officer finds, with respect to the Discharger's act or failure to act, the following:

1. Fernando B. Silva, Teresinha Silva, Duarta M. Silva, Fred A. Silva, Germana M. Silva, and Albertina S. Silva own the Silva Farms Dairy which is in T2S, R1 R10E, MDB&:M, at 8567 Rodden Road in Oakdale, Stanislaus County. The dairy is operated by John, Eddie, Fernando, and Manuel Naciamento. All ten parties will hereafter be referred to as "Discharger". Manure and wastewater generated at the dairy are discharged to approximately 190 acres of cropland. Both the dairy facility and the cropland are in assessor's parcel number 006-10-27.
2. In 1975, the Board adopted Waste Discharge Requirements (WDRs) No. 75-137 for the dairy facility. These WDRs were rescinded by Special Order No. 96-274, and the Discharger was ordered to comply with the General Waste Discharge Requirements Order No. 96-270 for Milk Cow Dairies.
3. Board staff documented discharges of wastewater and manured corral runoff from the dairy into the Dorsey Lateral on 28 October 1993, 25 January 1995, 15 March 1996, and 94 January 1997. Warden Philip McKay of the State Department of Fish and Game documented a discharge from the dairy into the Dorsey Lateral on 18 December 1995. None of these discharges occurred as a result of a 25-year, 24-hour storm. The discharges violated Orders Nos. 75-137 and 96-270.
4. In response to the violations, Cleanup and Abatement Order No. 97-711 was issued by Executive Officer of the Regional Board on 26 September 1997. Order No. 97-711 ordered the following:
 - "2. By 5 November 1997, submit a plan and timeline containing the proposed permanent modifications necessary to bring the entire facility (including corrals, ponds, cropland, and tailwater) into compliance with all prohibitions,

specifications, and provisions of WDRs No. 96-970. The plan shall be prepared and signed by a California Registered Engineer. The plan shall list each prohibition, specification, and provision of WDRs No. 96-270 and state how and when compliance will be achieved with each item. Once approved by staff the timeline shall become part of this Order and the due dates will be enforceable under this Order.

3. Submit a manure management plan by 5 November 1997. The plan shall be prepared and signed by an agronomist who is approved by Board staff and shall provide site-specific information on the use, timing, and application of animal waste and other nutrients to cropland at the facility.
4. By 5 November 1997 submit the Water Pollution Prevention Plan as described in and required by WDRs No. 96-270."

As of the effective date of this Complaint, the Discharger has failed to submit any of the above as ordered, and no significant corrective action has been taken to alleviate the violations.

5. Section 13350 of the California Water Code states, in part:

"(a) Any person who (1) intentionally or negligently violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board may be liable civilly in accordance with subdivision (d) (e) or (f)"

"(f) When there is no discharge but an order issued by the regional board is violated liability shall be imposed as follows:

Civil liability may be administratively imposed by a regional board in accordance with Article .r (commencing with section 13323) for a violation of this section in an amount which shall not exceed one thousand dollars (\$1,000), but shall not be less than one hundred dollars (\$100), for each day in which the violation occurs."

The maximum administrative civil liability which can be imposed by the Regional Board under Water Code Section 13350 is two hundred ten thousand dollars (\$210,000) for the 210 days from 5 November 1997 to 3 June 1998. The minimum liability for this 210-day period is \$21,000.

FERNANDO B. SILVA, TERESINHA SILVA, DUARTA M. SILVA, FRED A. SILVA, GERMANA M. SILVA, ALBERTINA M. SILVA, JOHN, EDDIE, FERNANDO, AND MANUEL NACIAMENTO dba SILVA FARMS DAIRY, ARE HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that an Administrative Civil Liability be imposed in the amount of forty thousand dollars (\$40,000), based on a review of the following factors:

The nature, circumstances, extent, and gravity of the violation or violations, whether the discharger is susceptible to cleanup or abatement, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of

violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require (Water Code Section 13327).

2. A hearing will be scheduled within 60 days unless the Discharger agrees to waive the hearing and pay the imposed civil liability in full.
3. If a hearing is held, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If the Discharger wishes to waive the hearing, he should sign the waiver, and return it with payment of the Civil Liability to the Board's office by within 26 days.
5. Payment of the Civil Liability does not absolve the Discharger of the need to satisfy the requirements of the Cleanup and Abatement Order.

GARY M. CARLTON, Executive Officer

3 June 1998

(Date)

WAIVER

I agree to waive my right to a hearing before the Regional Board and to remit forty thousand dollars (\$40 000) for the Civil Liability imposed.

Signature

Title

Date